

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 15 OF 2015

1. Pankaj Shantaram Patil
Age 23 years, Occu. Agriculturist,

2. Sachin Shantaram Patil
Age 21 years, Occu. Agriculturist,

Both resident of Malharpura,
Chopda, Taluka Chopda,
District Jalgaon.

... Appellants

Versus

The State of Maharashtra
Through City Police Station,
Chopda,
Prdip Bhagwan Patil
Age 24 years,
Resident of Rangrao Aba Nagar,
Chopda, Taluka Chopda,
District Jalgaon.

... Respondents

.....

Mr. Govind A. Kulkarni, Advocate for the Appellants.

Mr. S. J. Salgare, APP for the Respondent-State.

.....

**CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.**

**RESERVED ON : 09th MARCH, 2022
PRONOUNCED ON : 06th APRIL, 2022**

JUDGMENT (PER V. K. JADHAV, J.) :-

1. This appeal is directed against the judgment and order of conviction dated 24.09.2014 passed by the Additional Sessions Judge, Amalner in Sessions Case No. 19 of 2013.

2. The prosecution case in brief is as follows :

a. On 15.02.2013 at about 3.00 to 3.15 p.m., near the agricultural land of one Pramod Bhat situated at Nagalwadi road near Chopda, the appellants-accused persons in furtherance of their common intention, committed murder of deceased Bhagwan Shankar Patil on account of previous dispute regarding common *bandh* of their agricultural land by tightening a rope around his neck and smashing stone on his chest.

b. The agricultural land of deceased Bhagwan Patil is adjacent to the field of one Vasant Shripat Sonar. Deceased Bhagwan Patil had been to his field along with a bullock cart around 10.30 a.m. The appellant-accused Sachin Patil was watering the crop in his field. PW2 Mahendra Adhar Mali had been to the field of said Vasant Sonar at about 10.00 a.m. for watering the land. At that time, there was exchange of words between appellant-accused Sachin Patil and deceased Bhagwan Patil. Then appellant-accused Sachin Patil went towards PW2 Mahendra Mali and demanded his mobile phone to call his brother. Thus, by using his mobile phone, appellant-accused Sachin had called his brother appellant-accused Pankaj in the field

around 2.00 p.m. to 2.30 p.m. Thereafter, both the appellants-accused went towards deceased Bhagwan Patil. They started abusing each other. Appellant-accused Pankaj said that they should finish Bhagwan Patil on that day only. Appellant-accused Pankaj took out rubber hand gloves from his pocket. Deceased Bhagwan Patil started running towards road to save his life. He was having *shingade* (a sort of wooden log) in his hand. One auto rickshaw was passing by the road. Deceased Bhagwan Patil signaled by hand to the said rickshaw. It was stopped. Deceased Bhagwan Patil boarded that rickshaw. Appellants-accused Pankaj and Sachin started pelting stones towards the auto rickshaw. Appellant-accused Pankaj removed rope from his waist. He prepared noose of that rope. Appellant-accused Pankaj put the noose of that rope in the neck of deceased Bhagwan Patil. Thereafter, appellant-accused Sachin and Pankaj caught hold both the ends of that rope and pulled him out of rickshaw. They torn the banyan and nicker of Bhagwan Patil. Blood started oozing from his nose and mouth. He fell down. Appellant-accused Pankaj picked up a stone weighing around 20 to 25 kg. from the spot and smashed it on the chest of Bhagwan Patil. Appellant-accused Sachin Patil had also picked up the same stone and smashed on the right hand of deceased Bhagwan Patil.

c. PW7 Police Patil Vijay Dhondu Shirsath came to know about the incident through the villagers. Thus he rushed to the spot, seen the dead body lying there and reported the incident to the police at about 3.45 p.m. and the same was reduced into writing marked at Exhibit 36. On the basis of his report, Accidental Death No. 10/2013 came to be registered and enquiry was handed over to PW18 API Dilip Pandharinath Buwa.

d. On the same day, PW1 Pradeep Bhagwan Patil (son of deceased) came to know about the entire incident from PW2 Mahendra Mali. Thus, he has lodged the complaint Exhibit 23 in the concerned police station. On the basis of his complaint, crime no. 16 of 2013 under Sections 302, 201 r.w. 34 of IPC came to be registered and the investigation was handed over to PW24 PI Sham Somwanshi.

e. During the course of the inquiry of the AD, PW 18 API Dilip Buwa visited the place of incident and saw dead body of a male lying in necked condition. He has drawn inquest panchanama of the dead body in presence of two *panchas* and got it identified through PW1 Pradeep Bhagwan Patil. He noticed that backside of the head of the dead body was smashed, there was incised deep wound on chin and forehead left side and a rope tied around the neck and blood stains all

over the dead body. Injuries were on both hands and legs of the dead body. He has prepared panchanama of the place of the incident, took photographs of the dead body and seized the articles lying on the place of the incident.

f. During the course of investigation, the Investigating Officer PW24 PI Somwanshi has recorded the statements of the eye witnesses, seized the auto rickshaw and collected the documents of the auto rickshaw. He has also effected arrest of the accused persons and referred them for their medical examination. He has also referred PW2 Mahendra Mali for his medical examination. He has collected the injury certificates of the accused persons and PW2 Mahendara Mali, as well as the postmortem report of the deceased. He has collected the muddemal property seized during the course of inquiry of the AD from the inquiry officer. He has caused to collect blood samples of both the accused persons. He has sent all the samples and articles to the Forensic Laboratory at Nashik for chemical analysis. He has also seized the mobile handset of PW2 Mahendra Mali and the mobile of appellant-accused Pankaj under separate seizure panchanama and further requested for the call detail records (CDR) of the said mobiles and collected the CDR from the company. He has also recorded supplementary statements of the witnesses and also got

recorded statements of the witnesses under Section 164 of Cr.P.C. After completion of investigation, PW24 PI Somwanshi has submitted charge-sheet against both the accused.

g. Learned Additional Sessions Judge, Amalner has framed charge against the accused vide Exhibit 11 under Sections 302, 201 r.w. 34 of IPC. The contents of the charge were read over and explained to the accused in vernacular and both the accused pleaded not guilty to the charge and claimed to be tried. The prosecution has examined in all 24 witnesses and further relied upon various documents. After completion of the prosecution evidence, statements of the accused under Section 313 of Cr.P.C. came to be recorded. The defence of both the appellants-accused is of total denial and false implication. The appellants-accused have not examined themselves on oath, neither led defence evidence. Even they have not submitted additional written statement.

h. The learned Additional Sessions Judge, Amalner, by judgment and order dated 24.09.2014 in Sessions Case No. 19/2013, has convicted both the appellants-accused and sentenced them as follows:

“Accused No.1 Pankaj Shantaram Patil aged 23 years and accused No.2 Sachin Shantaram Patil aged 21 years, both resident of Malharpura, Chopda, Taluka Chopda, District Jalgaon vide Sec. 235(2) of Cr.PC. found guilty for the offence punishable U/s.302 r/w 34 of the Indian Penal Code and they are sentenced to suffer life imprisonment and to pay fine amount of Rs.10,000/- (rupees ten thousand) each and in default of payment of fine amount, accused shall suffer rigorous imprisonment for three months.

The above named accused vide Sec.235(2) of Cr.PC. found guilty for the offence punishable u/s.201 r/w.34 of the Indian Penal Code and they are sentenced to suffer rigorous imprisonment for three years and to pay a fine amount of Rs.2000/- (rupees two thousand) each and in default of payment of fine amount, accused shall suffer rigorous imprisonment for three months.

Both sentences shall run concurrently.....”

3-a. Learned counsel for the appellants-accused submits that the prosecution case mainly revolves around the evidence of PW2 Mahendra Mali. PW2 Mahendra Mali is not a reliable and trustworthy witness. His evidence suffers from improvements, omissions and contradictions. Learned counsel submits that PW2 Mahendra Mali has sustained injury in the form of bruise/superficial cut 5 cm in length on right hand. There is no explanation for the said injury on behalf of the prosecution. Learned counsel submits that there is confusion as to when PW2 Mahendra Mali has narrated the entire incident to PW1 Pradeed Patil. PW2 Mahendra Mali has not immediately disclosed the

incident to any one and the same is evident from the fact that on the basis of the report submitted by the PW7 Police Patil Vijay Shirsath, AD No. 10/2013 came to be registered at about 15.14 hrs. PW7 Police Patil Vijay Shirsath has simply stated that a dead body of a male is lying in naked condition by the side of the kachha road within the limits of Nagalwadi village and there is a rope tied around the neck of the said dead body. Learned counsel submits that even though PW2 Mahendra Mali has narrated the incident to PW1 Pradeep Patil and even though PW1 Pradeep Patil had been to the spot and seen the dead body of his own father, there is a considerable delay in lodging the complaint. On that day, around 7.15 p.m., the complaint Exhibit 23 came to be lodged and on the basis of the said complaint, the crime was registered. Learned counsel submits that even before registration of the crime, the number of the crime found shown in the documents prepared during the course of the inquiry of the AD.

3-b. Learned counsel for the appellants-accused submits that PW3 Shivaji Sonawane (driver of the ST bus), PW4 Bhanudas Patil (ST conductor), PW8 Darbar Pinjari (passenger of the auto rickshaw), PW9 Ravindra Birhade (second passenger of the auto rickshaw) and PW10 Ranjit Koli (driver of the auto rickshaw) are the chance witnesses. They were not knowing previously either the deceased or

the accused persons. The Investigating Officer has not conducted the test identification parade. Further, the accused persons were also not shown to these witnesses during the trial and these witnesses have merely identified the accused persons and the deceased person on the basis of their photographs. Their evidence cannot be relied upon to record the conviction of the appellants-accused persons. However, the trial court has committed mistake in relying upon their evidence which is rather distorted and not on the point.

3-c. Learned counsel for the appellants submits that the medical evidence is also not supporting the prosecution case. PW16 Dr. Swapna Patil has conducted postmortem examination on the dead body and she has opined that the cause of death is due to 'acute cardiopulmonary arrest due to asphyxia and hypovolemic shock due to polytrauma'. Learned counsel submits that the injuries referred in the postmortem and the inquest panchanama do not correspond to the allegations made in the complaint and the evidence of the eye witnesses. Learned counsel submits that the prosecution itself is confused as to whether the death of the deceased is due to strangulation or throttling. There were no ligature marks on the neck of the deceased and no deep injuries were noticed on the neck. PW 16 Dr. Swapna Patil is also not sure as to the cause of the death.

3-d. Learned counsel for the appellants-accused further submits that the pancha witnesses have not supported the prosecution case. Though the prosecution claims to have collected various articles like stone, rope, hand gloves, sample of blood mix soil from the spot while drawing panchanama, however, the prosecution has drawn a defective spot panchanama and considering the veracity of the version of the pancha witnesses, reasonable doubt is created about the panchanama.

3-f. Learned counsel for the appellants-accused submits that the prosecution has also not proved the seizure of cloths of the accused persons beyond doubt. The C.A. report is not supporting the allegations about the blood stains on the clothes of the accused being of the deceased.

3-g. Learned counsel for the appellants-accused submits that the prosecution has failed to substantiate the charge under Section 201 against the appellants-accused beyond doubt. Learned counsel submits that the entire prosecution case is based upon the circumstantial evidence and none of the so-called eye witnesses could

be said to be the eye witnesses. There are major omissions and contradictions in the evidence of the so-called eye witnesses. There is no explanation on behalf of the prosecution as to why the crime number is mentioned in respect of the seized property when the same was seized during the inquiry of the AD report. Furthermore, the article *shingade* came to be seized on the next day of the incident from a distant place.

3-h. Learned counsel submits that PW1 informant Pradeep Patil has belatedly lodged the report at about 7.15 p.m. in the evening and there is no explanation from the prosecution for the said delay of 4 to 5 hours occurred in lodging the complaint. PW1 Pradeep Patil was present at the time of the inquest panchanama. He had been to the spot and had a dialogue with PW2 Mahendra Mali. Irrespective of all these facts, he has not bothered to lodge a report immediately with the police. Thus, a concocted and after thought complaint came to be lodged. Both the appellants are entitled for the benefit of doubt.

3-i. Learned counsel for the appellants-accused, in order to substantiate his contention, placed his reliance on the following cases:

1. *Thulia Kali v. The State of T.N.*, reported in AIR 1973 SC 501.
2. *Ramesh Baburao Devaskar and others v. State of Maharashtra*, reported in (2007) 13 SCC 501.
3. *Kunju Muhammed alias Khumani and another v. State of Kerala*, reported in (2004) 9 SCC 193.
4. *Kanan and others v. State of Kerala*, reported in (1979) 3 SCC 319.
5. *Ramesh v. State of Karnataka*, reported in (2009) 15 SCC 35.

4-a. Learned APP submits that the prosecution case rests upon the evidence of the eye witnesses. PW2 Mahendra Mali is the important witness. PW3 Shivaji Sonawane (driver of the ST bus), PW4 Bhanudas Patil (ST conductor), PW8 Darbar Pinjari (passenger of the auto rickshaw), PW9 Ravindra Birhade (second passenger of the auto rickshaw) and PW10 Ranjit Koli (driver of the auto rickshaw) are also the eye witnesses to the incident. Learned APP submits that they cannot be termed as chance witnesses. The incident had taken place in broad day light on a road and all the above said persons were travelling in different vehicles from the said route. It has come in the prosecution evidence that because of the sensational incident going on the road, the vehicles from both the ends of the road stalled and in presence of all the persons, the appellants-accused had committed

murder of deceased Bhagwan Patil in a brutal manner. Even the driver of the ST bus PW3 Shivaji Sonawane had reported the incident to the Depot Manager. PW10 Ranjit Koli i.e. the auto rickshaw driver went to the police station and reported the incident to the police. He had reported the matter to the police because his auto rickshaw was damaged in the said incident. Further, his auto rickshaw was seized by drawing panchanama.

4-b. Learned APP submits that all the eye witnesses who had no occasion to see the deceased and the accused persons prior to the incident, identified the accused persons before the Court on the basis of their photographs and the said identification was not challenged by the defence nor objected at any point of time before the Court. Learned APP submitted that furthermore, the impact of the incident which had taken place in the broad day light was so strong that all these witnesses could identify the appellants-accused persons even on the basis of their photographs.

4-c. Learned APP submits that human blood was detected in the CA report on various articles and the inference could be drawn that the blood that was found on various articles, including the clothes of the accused persons, was of deceased Bhagwan Patil.

4-d. Learned APP submits that there is no confusion about the cause of death. PW16 Dr. Swapna Patil has explained about the same. On internal examination of the dead body, it was noticed that the left side ribs 2 to 6 were fractured and the plura was lacerated. The tracheal rings 2, 3, 4 and 5 were also fractured. Further, PW16 Dr. Swapna Patil has also recorded the pressure imprint abrasion on the neck because of the strangulation with knot on anterior side. PW16 Dr. Swapna Patil has well explained as to in what context she has used the word throttling.

4-e. Learned APP submits that there is evidence in the form of CDR supporting the prosecution case that the appellant-accused Sachin Patil had called his brother appellant-accused Pankaj on the spot and thereafter, both of them had committed murder of deceased Bhagwan Patil. Learned APP submits that there is no substance in this criminal appeal and the same is liable to be dismissed.

4-f. Learned APP, in order to substantiate his contention, placed his reliance of the following cases:

1. ***Raja v. State by the Inspector of Police*** [Criminal Appeal No. 740 of 2018 along with connected appeal decided by the Supreme Court by judgment dated 10.12.2019].
 2. ***Dana Yadav @ Dahu & others v. State of Bihar*** [Appeal (crl.) 1156-57 of 2001 decided by the Supreme Court by judgment dated 13.09.2002].
 3. ***Mritunjoy Biswas v. Pranab alias Kuti Biswas and another***, reported in (2013) 12 SCC 796.
5. We have perused the material exhibits tendered by the prosecution, the evidence of the prosecution witnesses, the statements of the appellants-accused recorded under Section 313 of the Criminal Procedure Code and the impugned judgment.
- 6-a. PW2 Mahendra Mali is the important prosecution witness. On 15.02.2013 at about 10.00 a.m. he had been to the field of Vasant Sonar for watering crop. Admittedly, the agricultural land of deceased Bhagwan Patil is adjacent to the field of said Vasant Sonar. PW2 Mahendra Mali has deposed that on that day, deceased Bhagwan Patil came to his field along with a bullock cart around 10.30 a.m. Appellant-accused Sachin Patil was also watering the crop in his field. PW2 Mahendra Mali had seen appellant-accused

Sachin Patil and deceased Bhagwan Patil talking with each other. Then appellant accused Sachin Patil came to him and demanded his mobile phone for calling his brother. Thus, PW2 Mahendra Mali handed over his mobile of china make and he had engaged in his work of watering the crop. PW2 Mahendra Mali has further deposed that around 2.00 p.m. to 2.30 p.m., appellant-accused Pankaj Patil came in his field and asked him about his brother appellant-accused Sachin. PW2 Mahendra Mali informed him that appellant-accused Sachin was watering the crop in the field. PW2 Mahendra Mali has deposed that thereafter, both the appellants-accused went towards Bhagwan Patil. They started abusing each other. PW2 Mahendra Mali had advised them that the dispute is going between them since long and they should stop it and they should do their job. Appellant-accused Pankaj Patil however said that they should finish Bhagwan Patil on that day only. Thus, appellant-accused Pankaj took out the rubber gloves from his pocket. Admittedly, those rubber gloves are used by the farmer for watering crop of lady finger. Deceased Bhagwan Patil started running towards road with a view to save his life. It has to be mentioned here that both the appellants-accused were young persons whereas deceased Bhagwan Patil was a middle aged

person. Deceased Bhagwan Patil was having *shingade* (a sort of wooden log) in his hand while running towards the road. He signalled one passing rickshaw on the road. It was stopped and deceased Bhagwan Patil boarded in the rickshaw. PW2 Mahendra Mali has further deposed that both the appellants started pelting stones towards the auto rickshaw. Appellant-accused Pankaj had removed the rope from his waist and prepared a noose of the rope. He has further deposed that appellant-accused Pankaj put the said noose of rope in the neck of deceased Bhagwan Patil. Thereafter, both the accused persons caught hold both ends of the rope and pulled deceased Bhagwan Patil out of the rickshaw. They tore his banyan and nicker. PW2 Mahendra Mali has also noted that blood started oozing from the nose and mouth of deceased Bhagwan Patil. Deceased Bhagwan Patil fell down on the ground. Accused Pankaj picked up a stone weighing approximately 20 to 25 kg. and smashed it on the chest of deceased Bhagwan. Even appellant-accused Sachin also used the same stone and gave smash on the right hand of deceased Bhagwan.

6-b. PW10 Ranjit Koli, i.e. the auto rickshaw driver has deposed that on 15.02.2013, he left village Varad around 2.30 p.m. to 2.45

p.m. for Chopda by his auto rickshaw. He was driving the auto rickshaw. There were four passengers of his village in the auto rickshaw. He has mentioned their names i.e. PW8 Darbar Pinjari, his wife and daughter and PW9 Ravindra Birhade. They came out of the local limits of village Nagalwadi. However, near the field of mango trees, one person started coming towards the auto rickshaw. While running, he was holding a *shingade* in his hand. The said person indicated fingers towards the persons behind him and told him that those persons were beating him. PW10 Ranjit Koli (auto rickshaw driver) has further deposed that the said person entered in the rear portion of the auto rickshaw and two persons, who were following him, started beating him. Those two persons following him also pelted stones. In consequence thereof, the backside glass of the rickshaw was broken. The passengers sitting in his auto rickshaw alighted out due to fear. PW10 Ranjit Koli has talked to those two persons, who were assailing one person, to compensate for the damages caused to his auto rickshaw. PW2 Mahendra Mali, who was standing there, told him that he is ready to pay compensation but he should start his auto rickshaw and go away from that place. It has come in the evidence that the said auto rickshaw is not a passenger rickshaw, but it is a goods carrier. He

has identified the appellants-accused on the basis of the photographs vide articles X1, X2 and X3 shown to him. He has further deposed that the accused before the Court are the same persons who assaulted that one person.

6-c. PW8 Darbar Pinjari (passenger of the auto rickshaw) has deposed that he was travelling in the said auto rickshaw along with his family members from his village Varad to Chopda. On the way, near the field of mango trees, one person came running from the opposite side. It was around 2.30 p.m. to 2.45 p.m.. The said person came towards the rickshaw and entered in the rear portion of the rickshaw. He was shouting “*mala wachwa mala wachwa*” (save me save me). PW8 Darbar Pinjari has further deposed that two persons came from the opposite side of the rickshaw. They were holding stones in their hands and they hit the stones on the window shield of the the rickshaw and broke the middle glass. Thereafter, he and the co-passengers got down from the rickshaw due to fear. Those two persons started assaulting one person by fist and kick blows. The ST bus came from the backside of the rickshaw. Thereafter, they boarded the rickshaw and the rickshaw driver put on the rickshaw and they left that place. They had

stopped near Thalner Darwaja at Chopda and got alighted from the said rickshaw. The said rickshaw driver went to the police station alongwith passenger Ravindra. He has also identified the assailants on the basis of the photographs articles X-1, X-2 and X-3.

6-d. PW 9 Ravindra Birhade, who was the second passenger of the auto rickshaw, has also deposed in the similar manner. He has also deposed that one third person, who came behind two persons, was trying to control them. He has further deposed that while the rickshaw was proceeding ahead till the turn, he had seen that those two assailants were pulling the noose of the rope placed around the neck of the said person. He went along with the auto rickshaw driver to the police station to report the incident. He has also identified the accused persons as assailants on the basis of the photographs. He has also identified the accused persons sitting in the dock in the Court as the same persons.

6-e. PW3 Shivaji and PW4 Bhanudas are the ST bus driver and conductor respectively. On 15.02.2013, the said bus left the depot of Chopda. The bus was plying on the route from village Devari to Chopda as a back journey. They have deposed that around 2.30

p.m. to 2.45 p.m., when their bus was 2 kms. away from village Nagalwadi towards Chopda, at that time, one auto rickshaw was ahead of the ST bus and it was around 500 feet away. The said auto rickshaw was also proceeding towards village Chopda. The said auto rickshaw was found in stationary condition. PW3 driver Shivaji has deposed that there were two boys and one old person. Those two boys were pelting stones towards the auto rickshaw. There were some ladies in the auto rickshaw. Those ladies came out of the auto rickshaw and rushed towards the bus. He has further deposed that those two boys pulled that old person from the auto rickshaw and both the boys made him to lie on the road. They were dragging that old person towards the bus. The passengers in the bus started making hue and cry. He also got scared. Blood started falling on the road. He has further deposed that one boy picked up a stone lying on the road and smashed it on the chest of the old person. Those two boys threw that person by the side of the road and ran away. He has reported the incident to the Depot Manager after reaching Chopda.

6-f. PW4 ST Conductor Bhanudas Patil deposed that one rickshaw was found stationary on road ahead of village Nagalwadi.

One male was there and he was wearing a lining pant. Two persons came there and a scuffle was started. He has further deposed that those two persons put the rope around the neck of that person. One of them was pulling from one side of the rope and another one was pulling the same from another end. He has also deposed that those two persons hit a big stone on that person. They took their bus ahead when the auto rickshaw went away. They have reported the matter to the Depot Manager. They were sent to police from the Depot on Monday. He has also identified the accused persons as assailants on the basis of the photographs articles X-1, X-2 and X-3.

6-g. We find the evidence of PW2 Mahendra Mali, who is an independent witness, reliable, trustworthy and consistent. Even his reference is also given by PW 9 Ravindra Birhade, who was travelling in the auto rickshaw, that a third person was trying to control those two assailants. PW 9 Ravindra Birhade must be referring to the presence of PW2 Mahendra Mali. It is not denied that the field of Vasant Sonar is adjacent to the field of deceased Bhagwan Patil. It is also not denied that PW2 Mahendra Mali was watering the crop at the time of the incident in the field of said Vasant Sonar. Further, there is evidence about the phone call made

by appellant-accused Sachin for calling his brother appellant-accused Pankaj on the spot. We find no reason to discard the evidence of PW2 Mahendra Mali only on the basis of some minor contradictions and omissions. Even though learned counsel has tried hard to point out the time factor, however, PW2 Mahendra Mali has witnessed a horrible incident and the same is evident from the fact that he left the spot when the appellants-accused lastly gave blows of stone on the chest and other parts of the body of deceased. We are not inclined to discard the evidence of PW2 Mahendra Mali only for the reason that he had injury on his hand which the prosecution has not explained.

6-h. We cannot expect immediate reaction from any eye witness on witnessing such a brutal murder on road. Thus, the reaction demonstrated by the eye witness is probable and conceivable from any human being facing the same situation. The evidence of the eye witness is clear and convincing. In view of the same, discrepancies cannot matter. Furthermore, the eye witnesses travelling in the auto rickshaw and the bus driver and conductor have witnessed the incident from different angle from different stage and from different position. Thus, it cannot be said that those

eye witnesses have contradicted each other. On the other hand, it appears to us that their evidence is consistent on material part.

6-i. It is well settled that if by coincidence or by chance someone happens to be at a crime scene at the time it takes place, is called a “chance witness”. However, the same would not be a ground to discard their evidence. There is a ring of truth in the evidence of all the said witnesses which we have referred above in detail.

6-j. Learned counsel for the appellants-accused has vehemently submitted about the delay of five to six hours in lodging the complaint and according to the learned counsel, the said delay is fatal. However, considering the brutality of murder committed in broad day light on the road, we do not think that the delay is fatal in this case. PW1 Pradeep Patil is the son of deceased Bhagwan Patil. Though he was informed about the incident by PW2 Mahendra Mali, but due to the horrifying death of his father, he must have taken some time to recover and lodge complaint in the concerned police station.

6-k. So far as the inquiry of AD is concerned, considering the horrifying nature of the incident, we are not inclined to look at the evidence of PW2 Mahendra Mali with suspicion. He has also deposed that considering the severity of the incident, he left the spot. In consequence thereof, the dead body was lying in the same condition as thrown by the assailants appellants-accused by the side of the road. Thus, PW 7 Police Patil Vijay Shirsath has reported the incident to the police and accordingly, AD No. 10/2013 came to be registered.

6-l. The prosecution evidence is well corroborated by the contents of the spot panchanama Exhibit 34. It appears from the contents of the spot panchanama that various articles, including the stone, the blood stained clothes of the deceased, hand gloves and the broken pieces of glass (broken pieces of the glass of the auto rickshaw) came to be seized from the spot. The seizure panchanama of the auto rickshaw Exhibit 49 also supports the prosecution case. On perusal of the said panchanama, it appears that the backside glass of the auto rickshaw was found damaged and even the pieces of the glass were also found inside of the auto rickshaw. It has also been specifically mentioned in the

panchanama Exhibit 49 that though the auto rickshaw is a goods carries, there are benches fixed at both the sides in the trolley for the passengers to sit. Though learned counsel has vehemently submitted that the passengers cannot be carried in a goods carrier and the Investigating Officer should have taken action against the auto rickshaw, however, the same may not be relevant to consider the evidence of those witnesses, who were travelling in the said auto rickshaw.

6-m. The inquest panchanama Exhibit 25 also supports the prosecution case. It appears from the contents of the inquest panchanama that the dead body was found along with the rope tied around the neck of the dead body. Even the Medical Officer PW16 Dr. Swapna Patil, who has conducted the postmortem examination, has also deposed that when the dead body was brought for postmortem examination, the said rope was still there around the neck of the dead body.

6-n. The prosecution has examined PW16 Dr. Swapna Patil, who has conducted the postmortem examination on the dead body. She has stated that the dead body was average 50 years old, Hindu

male and there was only blue banyan partially torn with the dead body. It was blood stained. She has noted the following surface wounds and injuries on the dead body:

1. Pressure imprint abrasion on neck because of strangulation with knot on anterior side measuring 15x2 cm.
2. Imprint abrasion on left side of chest and abdomen measuring 5x3 cm.
3. Abrasion on left elbow measuring 4x2 cm.
4. Contused lacerated wound on left side of chin measuring 5x2x2 cm.
5. Contused lacerated wound on left eyebrow measuring 4x2x2 cm.
6. Abrasions on both knees.

She has deposed that the underlying tissue and skin of neck strangulation shows ecchymosis. There were fractures on left side 2, 3, 4, 5 and 6 ribs and the injuries mentioned above were ante-mortem. On internal examination of the dead body, she has noticed (i) left side ribs 2 to 6 were fractured, (ii) Pleura was lacerated,

(iii)Tracheal rings 2, 3, 4, 5 fractured. In her opinion, the probable cause of death was acute cardiopulmonary arrest due to asphyxia and hypovolemic shock due to polytrauma. The postmortem report exhibit 65 bears her signature. She has further opined that injury no.1 in column no.17 of the postmortem report is possible if rope is pressed around the neck. The knot was to the front side of the neck. She has also explained that injury nos.2 to 5 are possible by hard and blunt object and injury no.6 in column no.17 is possible if a person is pulled. She has also deposed that the rope was around the neck of the dead body when it was brought in the hospital for postmortem. She has also identified the rope article "B" before the Court.

6-o. The prosecution has proved the homicidal death of deceased Bhagwan Patil. The postmortem report Exhibit 65, the external injuries mentioned in column no.17 and the internal injuries, as opined by PW16 Dr. Swapna Patil, fully corroborate the evidence of the eye witnesses.

6-p. The evidence of PW16 Dr. Swapna Patil is assailed on the ground that when the dead body was brought for postmortem

examination, rigor mortis had started developing. PW16 Dr. Swapna Patil has deposed in her cross-examination that she found the rigor mortis all over the dead body at about 8.00 p.m. and further stated that death of the person might have occurred before 10 hours. Learned counsel for the appellants has thus vehemently submitted that in terms of the said opinion and considering the appearance of rigor mortis all over the body, the deceased must have died around 10.00 a.m. on the date of incident.

6-q. Rigor mortis generally occurs while the body is cooling. Owing to the setting in of the rigor mortis, all the muscles of the body become stiff, hard, opaque and contracted, but they do not alter the position of body or limb. So far as the time of onset of rigor mortis is concerned, the same varies greatly in different cases but the average period of its onset may be regarded as three to six hours after death in temperature climates and it may take two to three hours to develop. In this region it usually commences in one or two hours after death. However, there are various circumstances modifying the onset and duration of rigor mortis i.e. (i) age, (ii) muscular condition and activity before death, (iii) manner of death, (iv) atmospheric condition etc. So far as the time since death is concerned, it is to be

remembered that the above stated conditions producing the changes vary so much in each individual case, that only a very approximate time of death can be given. In addition to these, the time of death can be ascertained to some extent from the contents of the stomach, bladder and the intestines. It is well settled that the time of occurrence of death cannot be fixed with precision merely based on the opinion expressed in the textbooks on medical jurisprudence. Further, PW16 Dr. Swapna Patil has deposed that there was semi-digested food in the small and large intestines. She has also accepted that it takes six hours to digest the food. However, the Supreme Court in the case of P. Venkaiah v. State of Andhra Pradesh (AIR 1985 SC 1715) has held that “medical science is not yet so perfect as to determine the exact time of death nor can the same be determined in a computerised or mathematical fashion so as to be accurate to the last second.” Further, considering the ocular evidence in this case, and in view of the above discussion, we are not inclined to draw the inference about the time of death only on the basis of medical opinion ignoring ocular evidence.

6-r. So far as the injuries on the person of the appellants-accused, the prosecution has examined PW15 Dr. Swapnil Ashok Patil who has examined both the accused persons as well as PW2 Mahendra Mali.

He has noticed one bite injury to the right hand middle finger of appellant-accused Pankaj Patil and the said injury was bleeding at the time of examination. He has accordingly issued medical certificate which is marked at Exhibit 59. However, no injuries found on the person of appellant-accused Sachin Patil. We are in agreement with the observations made by the trial court that considering the manner in which the incident had taken place, there was every possibility that deceased Bhagwan Patil took bite of the middle finger of the right hand of appellant-accused Pankaj Patil to save him from their clutches.

6-s. The C.A. report Exhibit 99 shows that human blood of group “B” was detected on various articles, including the clothes of the deceased, the rope, the stone, sample of the blood mixed earth taken from the spot and the glass pieces. Thus, the legitimate inference could be drawn that the blood group of deceased Bhagwan Patil was “B”. Though the blood group of both the appellants-accused is also “B” as per C.A. reports Exhibits 101 and 102 respectively, however, the bite injury as noticed on the finger of the appellant-accused Pankaj Patil is not sufficient to infer that the blood detected on various articles as per C.A. report Exhibit 99 is because of said bite injury sustained by appellant-accused Pankaj Patil. The C.A. report

also supports the prosecution case.

7. Learned counsel for the appellants-accused placed reliance on the case of ***Thulia Kali v. The State of T.N.*** (supra) to substantiate his contention as to how delay is fatal in this case. In para 12, the Supreme Court has made the following observations:

“12. It is in the evidence of Valanjiaraju that the house of Muthuswami is at a distance of three furlongs from the village of Valanjiaraju. Police station Valavanthi is also at a distance of three furlongs from the house of Muthuswami. Assuming that Muthuswami PW was not found at his house till 10.30 p.m. on March 12, 1970 by Valanjiaraju, it is not clear as to why no report was lodged by Valanjiaraju at the police station. It is in our opinion, most difficult to believe that even though the accused had been seen at 2 p.m. committing the murder of Madhandi deceased and a large number of villagers had been told about it soon thereafter, no report about the occurrence could be lodged till the following day. The police station was less than two miles from the village of Valanjiaraju and Kopia and their failure to make a report to the police till the following day would tend to show that none of them had witnessed the occurrence. It seems likely, as has been stated on behalf of the accused, that the villagers came to know of the death

of Madhandi deceased on the evening of March 12, 1970. They did not then know about the actual assailant of the deceased, and on the following day, their suspicion fell on the accused and accordingly they involved him in this case. First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay the report not only gets bereft of the advantage of spontaneity danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained. In the present case, Kopia, daughter-in-law of Madhandi deceased, according to the prosecution case, was present when the accused made murderous assault on the deceased. Valanjiaraju, stepson of the deceased, is also alleged to have arrived near the scene of occurrence on being told by Kopia. Neither of them, nor any other

villager, who is stated to have been told about the occurrence by Valanjiaraju and Kopia, made any report at the police station for more than 20 hours after the occurrence, even though the police station is only two miles from the place of occurrence. The said circumstance in our opinion would raise considerable doubt regarding the veracity of the evidence of those two witnesses and point to an infirmity in that evidence as would render it unsafe to base the conviction of the accused-appellant upon it.”

It is true that the object of insisting upon prompt lodging of the report to the police is to obtain early information regarding the circumstances in which the crime was committed. However, in the facts of the instant case, in our considered opinion, there is no possibility of introducing a coloured version, exaggerated account or concocted story as a result of deliberation and consultation.

8. Learned counsel has placed reliance in a case ***Ramesh Baburao Devaskar*** (supra) wherein, in the facts of the said case, in para 18 of the judgment, the Supreme Court has observed that a first information report cannot be lodged in a murder case after the inquest has been held. In the instant case, there are eye witnesses to the incident and even the postmortem examination was conducted after lodging of the complaint.

9. In the case of ***Kunju Muhammed alias Khumani and another*** (supra), relied upon by learned counsel for the appellants-accused on the point confusion about time of death, in the facts of the said case, in para 10, the Supreme Court has made the following observations:

“10. We also notice from the evidence of PW-10 and others that when they touched the body of the deceased they found the body was cold and frozen (may be a terminology used by the locals for the body having become stiff). Therefore, we think the trial court was justified in its finding that death had occurred much earlier to the time mentioned by the prosecution, and the High Court was in error in coming to a contra conclusion. Thus relying on (a) the statement of PW-1 that the complaint was signed on the midnight of 3.11.1991; (b) the FIR reaching the jurisdictional Magistrate more than 36 hours after the incident in question though the court is situated in the same town; (c) the evidence of the doctor as to the presence of rigor mortis on the body of the deceased indicating death must have occurred much earlier than 8.15 to 8.30 a.m. on 3.11.1991; and (d) recording in the inquest report Ex. P-6 that the body of the deceased when examined was found to be cold and frozen; we find that the conclusions arrived at by the learned trial Judge that the incident in question did not take place as indicated by the prosecution is a probable one.”

In the instant case, no contingency arose in terms of the observations made in para 10 of the case cited above.

10. Learned counsel for the appellants-accused has placed reliance on the cases ***Kanan and others v. State of Kerala*** (supra) and ***Ramesh v. State of Karnataka*** (supra) on the point of failure to conduct test identification parade. The Supreme Court has observed that where a witness identifies an accused who is not known to him, in the Court for the first time, his evidence is absolutely valueless unless there has been previous T.I. parade to test his powers of observation. The idea of holding T.I. parade under Section 9 of the Evidence Act is to test the veracity of the witness on the question of his capability to identify an unknown person whom the witness may have seen only once. If no T.I. parade is held then it will be wholly unsafe to rely on his testimony regarding the identification of an accused for the first time in Court. In the instant case, the main witness i.e. PW2 Mahendra Mali was knowing well the deceased Bhagwan Patil and both the assailants, however, the other witnesses, who were the bye passers as referred in the above discussion, had seen the appellants-accused and the deceased for the first on the spot. Even though assuming that their identification of the accused persons first time in the Court

raises doubt, however, in the facts of the instant case, their narration of the incident corroborates the evidence of PW2 Mahendra Mali to the full extent and in view of the same, identification of both the appellants - accused for the first time in the Court loses its significance.

11. Learned APP has placed reliance in a case ***Raja v. State by the Inspector of Police*** (supra), wherein, in para 18, the Supreme Court has made the following observations:

“18. It is, thus, clear that if the material on record sufficiently indicates that reasons for, “gaining an enduring impression of the identity on the mind and memory of the witnesses” are available on record, the matter stands in a completely different perspective. This Court also stated that in such cases even non-holding of identification parade would not be fatal to the case of the prosecution. Applying the tests so laid down to the present case, in view of the fact that each of the eyewitnesses had suffered number of injuries in the transaction, it can safely be inferred that every one of them had sufficient opportunity to observe the accused to have an enduring impression of the identity of the assailants. It is not as if the witnesses had seen the assailants, in a mob and from some distance. Going by the injuries, the contact with the accused must have been from a close distance.”

In the instant case, the evidence on record sufficiently indicates the enduring impression of the identity on the mind and memory of the witnesses. In the instant case, the eye witnesses in the foregoing paragraphs, witnessed the horrifying incident in the broad day light, where the middle aged person was murdered by two young persons in a horrifying manner. The matter thus stands in a comparatively different perspective and non holding of the identification would not be fatal to the case of the prosecution.

12. Learned APP has placed reliance in the case of ***Mritunjoy Biswas*** (supra), wherein, the Supreme Court has observed that while appreciating the evidence of the eye witnesses, the hypertechnical approach to be avoided. The minor discrepancies are not to be given undue emphasis and every omission cannot be considered a material omission. In para 31 of the judgment, the Supreme Court has made the following observations:

“31. The High Court, as we find, has read the evidence not as a whole but in utter fragmentation and appreciated the same in total out of context. It is to be kept in mind that while appreciating the evidence of a witness, the approach must be whether the evidence of the witness read

as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. [See State of U.P. v. M.K. Anthony (1985) 1 SCC 505] Tested on the anvil of the aforesaid principle, we have no shadow of doubt that the High Court has erroneously discarded the credible evidence by paving the path of totally hypertechnical approach.”

13. In view of the discussion above, we are of the considered opinion that the prosecution has proved its case beyond reasonable doubt. We find no substance in the appeal. The appeal is thus liable to be dismissed. Hence, we proceed to pass the following order:

ORDER

I. The criminal Appeal is hereby dismissed.

II. The judgment and order of conviction dated 24.09.2014 passed by the Additional Sessions Judge, Amalner in Sessions Case No. 19 of 2013, convicting thereby the appellants-original accused no. 1 Pankaj Shantaram Patil aged 23 years and accused no. 2 Sachin Shantaram Patil aged 21 years, for the offence punishable under Section 302 r.w. 34 of IPC and sentencing them to suffer life imprisonment and to pay fine amount of Rs.10,000/- each and in default of payment of fine amount, to suffer rigorous imprisonment for three months; and further convicting them for the offence punishable under Section 201 r.w. 34 of IPC and sentencing them to suffer rigorous imprisonment for three years and to pay fine amount of Rs.2,000/- each and in default of payment of fine amount, to suffer rigorous imprisonment for three months, is hereby confirmed.

III. The Criminal Appeal is accordingly disposed off.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)